

"Reconstructing Afghanistan: Freedom In Crisis": Panel II: Implementing Human Rights Protections

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CHAIRPERSON GAER: I would like to invite the panelists for the second panel to come to the front table. The moderators of this panel on implementing human rights protections are Commissioner Richard Land and Commissioner Firuz Kazemzadeh.

The panelists include Neamat Nojumi, Gay McDougall, Ian Martin, Sima Wali, Dr. Mohammad Qasim Hashimzai, Mohammad Farid Hamidi, Fatima Gailani, and Minister Karimi is also joining this panel.

The panel will run until--we've had a slight change in our time--the panel will run until 3:45.

COMMISSIONER

LAND: Before we start Panel Two, I've been asked by several people during the lunch break to make a clarification, which I'm happy to do. I was asked, evidently some of the press got the impression that a statement that I made at the end of the first panel, somehow I was speaking for the Administration. Now, I don't know how that could be since I'm not part of the Administration.

The Commission

is appointed by, three by the President, two by the Democratic leadership in the Senate, and two by the Democratic leadership in the House, and one Republican--by the Republican leadership in each house. So it's always a five-to-four Commission. It's a bipartisan Commission.

I happen to have

been appointed by President Bush, but I can assure you I'm not speaking for the Administration. I wish I were. I'm actually speaking to the Administration, and I was making a statement which, you know, somebody asked me if I was talking about conditionality. I wasn't using that term. I wouldn't make it as crass as that.

I was making a

prediction, and the prediction is, is that it will be very difficult, in a representative democracy like the United States, for the American government to keep a long-term, massive commitment to rebuild Afghanistan if basic freedom of conscience is not recognized in that country, if all Afghans don't have basic freedom of conscience - including the right to change their religion - because the Congressmen will be under such duress from their constituencies that they will not be able to sustain it. And that was more of a prediction than it was a suggestion, and that's just one American voter's opinion.

Panel number two

is to deal with implementing human rights protections. The purpose of this panel is to determine how to meet the challenge of implementing human rights protections in a highly decentralized Afghanistan, much of which is under the control of warlords, rather than the central government.

And what this

panel will attempt to discuss are approaches to neutralizing the warlords, providing effective security throughout the country, strengthening Afghanistan's National Human Rights Commission, and assuring that women have the knowledge and training to assert their rights, and Commissioner Kazemzadeh is going to introduce the panel.

COMMISSIONER

KAZEMZADEH: I am not a lawyer and don't have a booming voice.

[Laughter.]

COMMISSIONER

KAZEMZADEH: I hope you can all hear me.

First of all, a little clarification. A note was passed to me to the effect that Mr. Farid Hamidi from the Human Rights Commission is in the third panel, not the second one. And on the second panel we have Ms. Hanagama Anwari.

Now, we have heard this morning, and many of us were impressed once again by the enormous complexity of the situation in Afghanistan. Simplifications are always easy and always dangerous.

We talk about human rights, but human rights aren't worth much unless they are implemented, and it is the implementation of these human rights that concerns us now on the second panel.

We have a distinguished panel. Their names have already been read to us. Let me repeat, we have here Mr. Neamat Nojumi, who is identified on my list as a former anti-Soviet Mujahid, who fought, it says, "alongside, but not for, several of the warlords who are in power today." He has been a United States AID Afghanistan food security contractor and has written on religious freedom in Afghanistan.

We have Ms. Gay McDougall, who is the Executive Director of the International Human Rights Law Group. We have Mr. Ian Martin, Vice President of the International Center for Transitional Justice and the former Secretary General of Amnesty International, an organization known to all of you, very much concerned with all manners of human rights.

We have Ms. Sima Wali, President of Refugee Women in Development, an organization that originally dealt only with refugees and internally displaced persons, but recently broadened its scope to cover disadvantaged women and children throughout Afghanistan.

We have Dr. Mohammad Qasim Hashimzai, who is the Director of the Secretariat of the Judicial Reform Commission. He was, until recently, Deputy Minister of Justice.

We have with us,

and he has already been introduced and spoke to us, His Excellency Abdul Rahim Karimi, the Minister of Justice.

And we have with us Ms. Hanagama Anwari, on the Human Rights Commission in Afghanistan.

I want to welcome all of you, once again. Dr. Land, you'll ask the first question.

COMMISSIONER

LAND: Well, it's impossible, as we've heard from some--I'm not a lawyer either, but I do have a booming voice, so I trust you can hear me.

[Laughter.]

COMMISSIONER

LAND: It is impossible to protect human rights without physical protection from those who would abuse them. Until the Afghan government can protect its citizens, which may be a way in the future, it will have to rely on the international community to help provide the security.

The Commission has recommended the expansion of the ISAF beyond Kabul as a way of doing this. The U.S. is, instead, sending mixed military civilian provincial reconstruction teams to major centers outside the capital. This may or may not be effective.

The independent National Human Rights Commission has been assigned by the Bonn Agreement to investigate and monitor human rights abuses, development of indigenous capacity for protecting human rights, and especially champion the rights of women and girls in Afghan society. However, the Commission has been seen as a threat by the transitional administration, rather than a means to perfect it, and we need to see how we can strengthen it in its important work.

I'd like to start with a question for, first, for Mr. Nojumi, since you've known several warlords up close.

[Laughter.]

COMMISSIONER

LAND: The warlords, to outside observers, seem firmly entrenched, both in the transitional central government and its governors or effective rulers of many of the provinces outside the capital. Do you believe that this is an acceptable situation? How can human rights be protected in the areas they control? And when do you think we will see genuinely representative government throughout Afghanistan?

MR.

NOJUMI: I treat it as a multi-level question, but I'll try to be as short as possible.

First of all, I would like to thank the Commission for putting this magnificent gathering together and very welcome for the Afghan friends and officials who came faraway here to express their opinion and share their vision with the international community.

Let's start with the point that the international human rights system is a legitimate system which has been expected around the world in almost all countries. But as far as Afghanistan is concerned, there is a conceptual gap between the international human rights system and what's going on in Afghanistan.

If we go back to the history of the international human rights system, we may notice the Universal Declaration, the Universal Human Rights Declaration, being initially formed over 60 years ago in New York at Eleanor Roosevelt's apartment.

The purpose of putting that together was to protect citizens from the state. Traditionally, in Afghanistan, we have always had a weak state, by state I mean weak government and institution. In this regard, the concept generally is a Western concept. It doesn't really apply that much from this perspective in Afghanistan. It doesn't mean that the component or the basic or the mandates of the Declaration is not valid, it's absolutely valid, and we all know the legitimacy of it.

But when we apply that to Afghanistan, in Afghanistan, we have two types of constitution;

one is unwritten constitution, which has been practiced for many, many years and is still practicing in a variety of different parts of the Afghan society, and the other is the Constitution being formed and written in Kabul, which one way or the other was not really influential in the daily lives of ordinary Afghans around the country.

I had the opportunity to go to Afghanistan last year and cover studies in 15 provinces. I had the opportunity to go and talk to a variety of different levels and segments of Afghan society, and people who we call them "warlords," and those of the official government, and women, and I was recruiting women, both sexes, women and men into the workshops I was putting together and training them and sending them back for the program we had.

In this regard, I would like to ask and encourage the Afghan officials, and all of those who support Afghanistan, to adopt a new look at the Afghan tradition which has been accepted, practiced by the Afghan people.

For instance, at this moment, all of the financial contracts, agreements, has been done or have been done without the interfering of the government, the central government. The majority of Afghans who are married, do not have a certificate from the government. People are picking issues, according to their customs, their social contracts, in a way that helps them to manage their life.

In this case, I would like to, and I believe that the only way that we can really issue the importance or the improvements of human rights in Afghanistan is to find new ways, be a little more creative. Afghanistan is different than many other countries. We cannot find a model and pick that model and impose in Afghanistan.

For that purpose, I think the best way is to develop a process which can be based on double track. In one track, we put our emphasis, and effort, and resources to the governmental institutions. On the other side, on the second track, we give people a chance. Let Afghan community to have their rights like they had before. For many years, Afghan community enjoyed some sort of autonomy, and they approached a matter of social--especially individual and communal rights according to what they agreed on.

As far as the individual rights and human rights is concerned, in the past, and currently, the Afghan citizens in the urban centers generally use the government resources as a last resort. They try everything else. Assuming there is spousal

abuse in a family, they go to the local mosque or local elders or the prominent individuals in the community. If that thing couldn't be solved, then they go to the government.

The same thing in the rural areas. People, there are limits for each person to go individually to the government. For instance, they have to go through hierarchical social ladders to go through their local jirga, and the local jirga is influenced, one way or the other, by the malik, in the past, or landlord, and now by people who we call the warlords. In this regard, the double-track process is the only way that we can really have a new look on addressing the justice and the improvement of human rights in Afghanistan.

COMMISSIONER

LAND: Mr. Nojumi, thank you. I appreciate that. Our time schedule has been even further compressed by the events of the day, so we do need to try to keep our answers as succinct as we can.

Ian Martin, what are some of the current obstacles to the effective protection of human rights in Afghanistan, particularly in the areas that are not under the control of the transitional government?

MR.

MARTIN: First, I'd like to make clear that I have no claim to be an expert on Afghanistan; that one thing Afghanistan shares with a lot of other countries is the terrible problem of facing a major legacy of human rights abuse in the past, as well as the challenge of providing human rights protection in the present.

Our organization, the International Center for Transitional Justice, exists to try to enable people, in devising their own approaches, in their own context, which must always be different from one country to another, at least the benefit from the experience of other countries, and in that context, we are trying to be of what assistance we can to the Afghan Independent Human Rights Commission, which has been given the mandate to consider transitional justice questions, as well as current human rights education and protection, and in that context I, and colleagues, were in Kabul in December.

The first obstacle, and it's been said, but probably didn't figure enough in our discussions this morning, is security, and I'm glad that you referred to your own recommendation as Commissioners, quite rightly, on expanding the institutional security presence beyond Kabul, and I was surprised that representatives of the administration didn't address that recommendation of your own Commission, because however unrealistic it may seem that anything is going

to be done in that direction, it has to be repeated that in failing to provide security out of Kabul, the international community is very seriously letting down the Transitional Administration, all of those fighting for human rights in Afghanistan, and indeed its very own efforts in reconstructing Afghanistan.

That is not going to be answered by the joint reconstruction teams that you referred to, and there was a brief reference this morning to them, which will send small groups of civil military teams into the provinces. They have no security mandate, and it is even possible that they could further undermine the need for the central government and civilian authority to establish itself locally by strengthening the nexus between the coalition military and local military commanders, local warlords. So that is the first thing that has to be said.

The second thing that should be said, I think, is that the international community is not playing as strong a role in current human rights protection as it ought to be.

My own work before my present role was largely in the efforts of the international community, particularly the United Nations, to provide on-the-ground human rights protection in a number of conflict and post-conflict situations, and that is, in particular, the responsibility of UNAMA in Afghanistan. Eventually, of course, it is the responsibility of the Afghan Independent Human Rights Commission.

But however much one believes that effort should be Afghan owned and Afghan led, human rights protection in a situation of acute insecurity is one where the international community has to take a strong responsibility, and I believe that the extent to which that is being fulfilled by particularly the United Nations on the ground needs to be reexamined. And the extent to which the United States is using, not its State Department voice on human rights issues, but its Pentagon voice in its dealings with individual commanders on the ground is, in fact, a strong voice for human rights protection.

And then, thirdly, and briefly, at this stage, our particular involvements, as I said, relates to how one looks at past abuses. Of course, unless there's some security, unless there's some possibility of current human rights protection, what can be done about the past is limited, but it, too, should not be overlooked in this situation. It would be premature, of course, to think that with the justice system in the condition that has been discussed, there could be prosecutions now for past human rights abuses.

I believe it was

a sound decision to ask the Afghan Human Rights Commission to consult broadly throughout Afghanistan and gradually develop a transitional justice strategy, but there is an international responsibility there too.

Asma Jahangir,
the UN Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions,
has recommended that there should be an independent international commission of inquiry, not to begin extensive investigations, but at least to begin to map out what is the legacy of the past and then to discuss with the Afghan Independent Human Rights Commission how it should be addressed.

I believe that
is a sound recommendation. I believe it is one that would rightly give a signal that even if accountability cannot be immediate, it is at least, in prospect, and that that would be an important signal to those who have abused human rights in the past and remain in the position to do so today.

Thank you.

COMMISSIONER

KAZEMZADEH: I have a multi-layered question for Ms. Wali and Ms. McDougall.

The question is
what is the potential of the Human Rights Commission to advance human rights protection throughout Afghanistan, and what may be hampering its development and activities, and then, of course, what can the U.S., the U.N., and other members of the international community do to strengthen its capacity to carry out its mandate under the Bonn Agreement? For both of you ladies.

MS.

McDOUGALL: Shall I just--

MS. WALI:

Go ahead.

MS.

McDOUGALL: I guess, well, first of all, I'd just start by echoing Ian Martin's comments that I'm not an expert on Afghanistan. My organization is there on the ground, has an office working with civil society organizations, as we have done in many countries around the world, helping to strengthen their

role in these critical processes of constitution-making and human rights enforcement.

So not as an expert, and I would turn the microphone over to the experts, especially Commissioner Anwari. I would say this much about the Commission: if you look at the constituent document, which at this point is the presidential decree, it gives a range of authority and independence to the Human Rights Commission that is quite significant. It's been drafted in accordance with the U.N. principles on the status of independent national institutions, it gives a range of independence, immunity from civil and criminal prosecution, removal by external authorities, and very importantly, I think, budgetary independence.

It's got subpoena power, it can initiate inquiries, investigations, summon witnesses, all of the tools that it would need to be extremely effective over the near term, mid term and long term because I think that all of these powers are not going to be quite useful immediately to the Commission, and perhaps the most important thing on its agenda right now is establishing itself, educating a population about the importance of the universally recognized human rights guarantees, and those instruments, international instruments, that the government, in fact, has ratified in the past--the importance of the equality of women in a society, et cetera.

But I would quickly say that I think that there are a couple of things that must be essential for guaranteeing its effectiveness in the near and mid term. First of all, of course, the security situation, there is no good approach to investigating abuses or to educating a population if you can't get out of your own major capital, and I think Ian Martin has spoken about the security gap.

Secondly, this is a, if you will, transitional authority, that the Commission is operating under now. I think that it is critically important that these powers that it has now, this autonomy, this independence, gets it entrenched in the Constitution as it is drafted and adopted over the upcoming year, and that, as well, the Constitution give a strong base of guarantees of rights that are, as someone said earlier, a statement of the values and aspirations of the Afghan people, and this is a strong statement of national commitment to the work that the Human Rights Commission will be charged with doing.

I think it is important work that the Commission will be undertaking to see that the Constitution-making process is owned by the people of Afghanistan, the civil society. We will offer our assistance in every way possible in that process.

Just briefly, let me just say that I think that what is very important, from the U.S. government, is to see much more recognition of a commitment, over the long term, to building the human infrastructure of Afghanistan, the justice structure of Afghanistan, building mechanisms that will assure the ownership of these institutions by the people. It's not a short-term process building sustainable institutions. I don't think it can be jump-started, but I think that what we need to do is to show that we're with this process over the long term and that we're willing to put significant resources into it and into guaranteeing, as the Bonn Agreement made clear in several provisions, the importance of the participation of women in all aspects of these institutions.

MS. WALI:

I'd like to echo some of what Gay McDougall was saying. I think this is where we need long-term international support and from the U.N., both financial and moral, to basically strengthen the individual and the collective capacities of the Commission and the Commissioners, particularly with regards to women. Because if that message is not very clear, I think you will lose another major opportunity in the developing, tolerant and democratic Afghanistan.

It is imperative that we also promote human rights education and gender equity issues. That language must be strongly protected and safeguarded in the Constitution. What my concern is that there seems to be very little debate in developing the Constitution and the Constitution language. There is a lack of public debate, and if you're talking about an Afghan society that has changed demographically as a result of 23 years of war, we're talking about 60-percent women. However, when you look at those ratios, very few women are represented, and unfortunately the women we have in the current political commissions lack the capacity, and so therefore we need to upgrade their own capacity and to render support to them. They need to get a commitment from the international community to protect them.

And most importantly, the issue of warlords, I mean we have to hear talk about the duplicity of the war against terrorism being braved in Afghanistan and the fact that the nation is being built, while at the same time we have very powerful warlords that are representative in the government and are holding major positions of power. So how can you balance that? How can the Human Rights Commissioners basically address those issues?

We need to talk about the balance while we are creating an Afghanistan. What is lacking is the debate and the discourse of creating a very strong balance between the powerful political institutions and the independent sector, the NGOs. We need to create bridges and a balance between those two institutions. We need to do that in order to help create a mind-set, and here I must add a caveat that, unfortunately, the Taliban mentality still reigns. We need to be able to promote human rights education, to protect the witnesses that come

forward and protect the Commissioners who are courageous enough to come forward and address the major and flagrant violations of human rights.

So, in order to create a tolerant Afghan society, you need to create a discourse between the Afghan people and the powerful political institutions. There is very little now of that happening.

COMMISSIONER
LAND: Thank you.

If I could ask as a follow-up Ms. Gailani or Ms. Anwari, would either of you like to comment on this question?

MS.
GAILANI: Yes. Actually, it's very important how we protect human rights, which I don't separate from women's rights and democracy. The three, for me, come together.

For me, it has two aspects: What we can do inside Afghanistan and what the donor countries can do. I believe that initially we should start by not giving even a slight space for double standards and sacrificing democracy, women's rights, and human rights the way it was done during jihad, during our fight against Soviet Union, that everyone was so preoccupied and so busy thinking how the fight of two superpowers and Cold War should be won, so there wasn't even a slight question of what will happen to women's rights, what will happen to democracy, and the more hard-line, the more extremist you were, the more help you would get. So that should be totally out of question, out of scene.

As Sima Wali said, I agree with her, that still there are those people existing not only in Afghanistan, but within the government.

The other thing is that we should stop comparing today's Afghanistan with the time of Taliban because anything will look good compared with Taliban.

[Laughter.]

[Applause.]

MS.

GAILANI: We should look forward and have an Afghanistan which will look good at any standard, and we have the capacity. We can do that.

I believe that we, on our part, we should take things seriously. We should emphasize, even if there is some danger, as Mr. Nojumi said, we have to take this danger now. If we fought a superpower, and we prevailed, we should do that now for democracy and human rights and women's rights.

On the other hand, the donors should tie very, very hard tie, these principles of human rights, women's rights, and democracy with every single aid which comes to Afghanistan.

[Applause.]

MS.

GAILANI: I think it can be done. Yes, constitutions did exist only in Kabul, but we saw, during democracy, that slowly it did trickle inside villages and outside Kabul too.

When we talk about strong government, for me, a strong government is not a government which has lots of weapons and is capable of lots of killing and all of that. For me, a strong government is which has the support of people, which has the people who can believe in it. I believe that if we have a good Constitution, a Constitution on the paper, and then we have next to it a government that people can believe in it and can look up into the leadership, look up into the ministers and capable people in it, I have no doubt that it will trickle through the whole society.

Thank you.

MS.

ANWARI: Thank you. I would just add some comments, if you allow me,

on the presentations that were given, in terms of the National Human Rights Commission perspective.

The first discussion was regarding the security and the position of the central government of Afghanistan for expanding the security out of the Kabul, which is very much clear that we need lots of support from ISAF, international security and peacekeeping forces.

But the thing that we would like to emphasize is the mechanism of the security expansion, which the ISAF expansion, of course, it is a good thing to expand, but we need to look at that much more carefully. What sort of mechanism ISAF would take and would have a specific objective and a specific period of time, what will be the achievement of ISAF in Afghanistan? Which the first one is to collect all of the weapons, and demobilize or demilitarize the country.

The second thing, regarding the security and expansion of the authority of the central government out of Kabul, is to end the power of the people who we call them warlords. For that, one of the recommendations that we want to put forward is that the new Constitution in Afghanistan should just end all the political parties which was for during this 23 years of war in Afghanistan. Under the new Constitution, there should be clear criteria and conditions for forming a political party, because the reason, which is very much clear, that using the means of political activity, and as I said in the morning, using the religious feeling and moral feeling of Afghan community was the cause of all of this destruction in Afghanistan, in many ways.

My second comment is regarding the women's situation and women's rights in Afghanistan under the new Constitution and the reconstruction process in Afghanistan; that special attention should be paid to the women's situation in a specific period of time. Because maybe for next five or ten years in Afghanistan, we will need specific terms, articles, orders regarding ensuring women's rights in the Constitution and all of the legal system of Afghanistan.

Because, as an example, I want to just share with you that, in the Constitution, they are called citizens. In the broader means or explanation or definition, it means men and women. But, unfortunately, in Afghanistan, when you call citizens, there are primary citizens and secondary citizens in the minds and thoughts of the people. To avoid this kind of interpretation of citizens, we need a clear definition of citizenship in the Constitution of Afghanistan. I am again emphasizing that it will be a requirement for a specific period of time.

Equally, it is very much important to have the equal participation, to make sure that equal participation of women in all of the political actions at the country level is there. For that, we need specific conditions in the Constitution, specific, like based on the population of women in Afghanistan. We need to consider their rule and participation in the whole process that is going on.

The third comment is regarding the warlord or the transitional justice in Afghanistan. One is the violations which has happened in the past in Afghanistan, which is very much difficult now today, in the situation that we are now in Afghanistan, to address all of these violations. Because of lack of the security, lack of the empowerment, and lack of the awareness of the people themselves, it is very difficult to address all of these violations, but it doesn't mean that we should stop looking into all of these violations. Because if we are not addressing the violations which has happened in the past, then today we have, again, all of these violations which was in this 23 years of war. Now we are facing it again, and in the future, we will have it again.

That is why specific attention to be paid. But for this attention, in my view, and in the Commission's view, the rule of community, Afghan community, Afghan nation is very much important. Equally, it is important, the international way of thinking and feeling, but the Afghan nation, themselves, should decide how they want to deal with the violations which was happening in this 23 years of war.

I would just finish for now.

COMMISSIONER

LAND: Commissioner Gaer had a question she wanted to address.

CHAIRPERSON

GAER: I want to ask the panelists about some dangerous signs, in terms of human rights in Afghanistan right now. We spoke earlier today about deaths, about security problems, about a lack of credible investigations on a variety of levels.

We understand that even on issues related to women and education, there are now persons distributing notes saying don't send your girl children to school; that mullahs are preaching and saying don't send the girls to school; that jobs outside the home are being discouraged; that despite the defeat of the Taliban, there are restrictions in different areas on dress and in movement by women; there is harassment, rather than protection, taking place; and a recent report by Human

Rights Watch says that women are sometimes even pulled off the streets for gynecological examinations-especially if they're discovered in the company of an unrelated male.

These are troubling reports, to say the least. My question is simple: who is there to help and who is there to listen?

I'd like to ask this of all of our panelists, but particularly our guests from Afghanistan: have any of the international NGOs that are present, the U.N. that's present or any of the agents of the Afghan government helped to provide you any kind of protections? Is anybody in the United States Embassy paying attention to human rights issues on a regular basis and providing any assistance on any of these problems?

If you want this to be done by foreigners at all, then that's another question. My underlying question is something that Thomas Jefferson is reported to have said, when he was writing the Declaration of Independence, and felt very lonely, "Is anybody there, and does anybody care?"

MS.

GAILANI: Yes, they do care. For the last nine months that I have been living back--I move back to Afghanistan--I hear that from all sorts of people, from the Europeans, from Americans, and with several meetings that I had with the President, he is very concerned, and he continuously does ask people what should be done.

The remedy I have maybe does not sound that popular today. I strongly believe that most of these things we can fight with Islam because now those people that we have been just talking about, those people that they are looking for slight excuse just to trigger the trouble, and start a chaotic situation, they would like a foreigner to do such a thing. They would like foreign soldiers to go and say, "Why do you bother this girl," and all of that.

I think it should be done by the government, and I think government should recruit young, educated Muslim jurists and Muslim experts who do exist in our society. I know quite a few of them. And they can support any legal support for women, in this case, because all of these things that you said they are absolutely totally against Islam. Actually, they're not supposed to be done, and Islam could protect these women from that.

For example, if a man in a village, when in the constitution education becomes compulsory, so how could you make a man in a village to send a girl? If you say because America says so or the Western society says so, they will not listen, but if you go and open Koran and say that, look, it is written here, and you are going against the first order of God, I'm sure that man will have a second thought.

This question that Ms. Leno said about the radio, it is so important. People are listening to radio all the time that they are awake. They just listen to the radio. I have become addicted to radio.

[Laughter.]

MS.

GAILANI: So people listen to radio. If we could put these messages into dramas and things that men and women get attached with, these days easily they get attached with things. So it is very important to have.

The other thing

I was discussing a few days ago in Kabul with the Minister, that we don't have any place where women could go if they have a problem, and they are imprisoned or they have a legal problem, there isn't any place that they can go. We don't have proper lawyers to protect them or give them legal aid. So it is very important that we have an independent legal body there that is really for women to be protected.

MS. WALI:

May I add one point?

COMMISSIONER

LAND: Yes, please.

MS. WALI:

I think one issue that we need to address is the fact that, is the issue of the power of the warlords and the foreign intervention, which was not--I was in Bonn, and I was a signatory to the peace agreements. Unfortunately, that issue was not addressed adequately. Well, it was not addressed at all in the Bonn Agreements.

It's not really a question of pouring in aid because irrespective of the small amount of aid that the U.S. puts in, the drug culture and the power of the warlords actually far supersedes the aid that is given to Afghanistan.

So if you're talking about really creating an Afghanistan, in which the people, where the peace dividend is transferred to the people, we need to disarm, demobilize and to make sure that the foreign intervention and the power of the warlords is eradicated.

This is why we're talking about two issues--the expansion of the security forces, other than Kabul, to bolster the central government, and most importantly, when you're dealing with people who have regressive, and throughout the process of the war, have been influenced by neighboring countries and by extremist Islamic principles, I mean, according to them, that we need to make sure that the people of Afghanistan, women in particular, are educated in understanding their own rights within the Islamic framework.

And I work with NGOs in the field with women and men who support them. These are Afghan women. I just came from Afghanistan, and across the board, they're all asking for education within the Islamic context as to how to understand human rights and women's rights within the Islamic context so that they can argue with the powers that be.

And again the issue of the drug economy must be addressed if we are to talk about an Afghanistan where women and men feel that they are free enough to create a tolerant and a democratic Afghan society.

And, unfortunately, my last point is that there is not enough support and inclusion of moderate-minded Afghans and tolerant-minded Afghans in positions of power. We're talking about a very, in addition to that, we're talking about the very highly professional and committed Afghan men and women in the diaspora, and, unfortunately, those linkages have not been made.

COMMISSIONER
KAZEMZADEH: Who can and how can they break the power of the warlords, Mr. Nojumi?

MR.

NOJUMI: It seems I am the only expert dealing with warlords--

[Laughter.]

MR.

NOJUMI: --and I hope my suggestion helps a little bit in the process.

During my years serving the Afghan resistance in the '80s, one thing that I have really discovered was the power of the people, the power of the local communities. In Afghanistan, traditionally, in the whole history of the Afghan government, as an institution, we have seen failures of the government again, and again, and again. And it was the Afghan people, the local community; they were the ones who came to help in the time of crisis, during the British invasion, during the Soviet invasion and after.

Traditionally, in Afghan society, we have a safety network. That safety network is comprised or led by very experienced leadership who really understood the nuts and bolts of the local community, and they could communicate with people. Unfortunately, because of the war, because of the influence of warlords, we have lost that generation of leadership.

And in addition to that, a massive displacement of refugees and for several times people have been pushed, people back and forth into their community, and they have lost their local resources to establish their civil society back and protect themselves.

What I have said at the beginning, the double-track process, in one track, the government's responsibility is to be accountable to its citizens, working through the Constitution, and of course we have, in the previous session, we have talked about the 1964 Constitution, but there have been a lot of changes in Afghanistan in all aspects. Of course, that has to be elevated to the current legal needs of the Afghan society.

And the general framework of the Constitution is still not really defined. Is this Constitution separate, the branches of the government or not? As far as the judicial system is concerned, in my personal opinion, the judicial system currently doesn't have a direction. They need to ask, generally and honestly, the professionals who can help them. By professional, I don't

mean those that have a degree from some universities, also seek those who have expertise in the Afghan tradition.

Another point which I would like to really emphasize on this, again, on the notion of Afghan tradition. There are so many notions that I can make a big list that has no problem with international human rights and no problem with the Universal Declaration of Human Rights, which I have briefly presented in a paper that I provided for the Commission today.

There is a list of it, and we have to adopt the Afghan traditional notions that provide valuable experience and provide the popular language. We need to combine that within the national human rights system in Afghanistan, and make human rights system as a general, as an indigenous, as a national one, not something that's been imported, as Ms. Gailani mentioned and other friends, from abroad, in order to achieve all of this, and especially at the time that we are really suffering from the confusion and uncertainty in Afghanistan.

For instance, as I said, there are customs being practiced in the country that really the government doesn't have the power at this moment to interfere, and neither or nor the local traditions.

For instance, in Harat, last year, 100 girls committed suicide just running away from forced marriages. They set them on fire, according to reports from the Harat hospital. At the same time, the level of depression is so high in every level, and the facilities are not there.

In order to really address this, we need to have gradual approach for this. One, as I said, working through the government, launching a massive campaign of providing information, by training the judicial system, the law enforcement and enforcing or including human rights quotas into the educational system of the country.

Second, we need to support, we need to understand the role of the Human Rights Commission, Independent Human Rights Commission in Afghanistan. It has a vital role on other NGOs and organizations that are working in the field.

Thirdly, we need to understand the role of the international donors, as mentioned. I suggest that the State Department has to come out with an official, as the U.S.

Commission for International Religious Freedom has suggested, to have an official in Afghanistan, in Kabul, to monitor, cooperate with the Human Rights Commission and other NGOs. The whole importance of human rights has to be bound with the U.S. policy in order to, in respect to the current government and the future government, as far as the U.S. assistance is concerned.

COMMISSIONER

KAZEMZADEH: We are running out of time. I'm sorry.

MR.

NOJUMI: I'm done. Thank you.

COMMISSIONER

SHEA: Can I follow up, though? I'd like to ask both Mr. Nojumi and Ms. Wali your views about the religious police. That's something that the government can take control of.

How can religious freedom exist with religious police that, as we see them act in Iran and Saudi Arabia, enforce judgments on the spot, no due process whatsoever? This is the religious beliefs and practices enforced by an arm of the state. I understand, Mr. Nojumi, that you've had a run-in with them, personally, but is this a problem for women as well? Can you just shed briefly, very briefly, shed a little light on what is going on there, and is the American government funding it?

MR.

NOJUMI: The division that we call it religious police has been funded by the current government. Traditionally, it was not part of the traditional government system in Afghanistan. It is the product of the post-government, post-Soviet government in Afghanistan, and which was funded generally by the Council of Sheik originally under the Taliban from Saudi Arabia.

Currently, they claim that they are a part of the, they are working with the Justice Department, but on the street, I have noticed that they are not really following what the Justice Department suggests. They are on the street, and there is not really a clear definition of their role. If there is a civilian police, why those people are outside? If they are mullahs, they should be in the mosque.

COMMISSIONER

SHEA: Ms. Wali, should they be around? Is there a role for them in

this society?

MS. WALI:

As Mr. Nojumi noted, this was a tradition that was created during the time of the Taliban. I mean, across the board, when you talk with Afghan men and women, as I have had with my team throughout the process of the war, they are saying that we don't have this tradition. They are totally opposed to the idea of this kind of police. It's a notion that was carried on from extreme fundamentalist Islamic societies which did not have a tradition in the Afghan society.

This is where a closer monitoring of the international community and the U.N. is required. When you have a government that the current government is not strong enough and it needs support to strengthen itself, one of the ways it appeases the very strong fanatics and the extremists who are in the current government is to appease them by creating, sort of reverting back to some of the practices during the time of the Taliban.

So this is where, as I said, aid must be made conditional on the principle that it promotes women's rights, democracy, peace, freedom, as we signed in Bonn, and we have to create a broad-based, multi-ethnic, and gender-sensitive government, and human rights is a major component of the Bonn Agreement. If the international community lets that lapse, we will have lost a very major opportunity here.

COMMISSIONER

KAZEMZADEH: My Chairperson reminds me that we have only 10 minutes left and that we should let the audience ask a few questions. I see several hands.

[Laughter.]

COMMISSIONER

LAND: Ask them to identify themselves.

DR.

SHORISH: [Off microphone.] I am Dr. Shorish. I am with Women's Alliance for Peace and Human Rights in Afghanistan. I am [inaudible], and I have been learning about Islam and women's human rights for 25 years. So I've been very frustrated because you cannot voice what you think.

First of all, on education, on Islam and women's rights and human rights, I hold accountable the government of Muslim countries because they purposely--I'm not talking just about Afghanistan, the entire Muslim world--they purposely control religious knowledge and deny it to the masses. And the mullahs, who work for them, interpreted the Koran the way they wanted it to be.

So, therefore, the person or Muslims--I have been saying this to our government, the United States, to get the allies to educate their people on their rights in Islam, as well as United Nations, and international law, as well as share the wealth, and give them freedom and democracy. Unless that is done, we cannot get anywhere in the Muslim world, particularly regarding human rights.

COMMISSIONER
KAZEMZADEH: The question?

DR.
SHORISH: No, comments.

COMMISSIONER
KAZEMZADEH: We would like a question.

DR.
SHORISH: No, please.

[Laughter.]

DR.
SHORISH: Well, I'll ask a question.

[Laughter.]

DR.
SHORISH: Regarding Islam and other religions, I mean, I didn't understand why a lot of people tried to explain in Islam anybody can practice their religion and Islam, supposedly, in Islamic world or in Islamic society.

However-- because Koran says there is no compulsion of religion. Therefore, you could be Christian, Jews, Buddhists, whatever religion--however, you cannot impose, you cannot go, in other words, a Muslim will get upset if the person who does not want to convert to another religion is put in a position and [inaudible]; in other words, there were a lot of groups, Christian groups, that went inside Afghanistan and told the people, you know, give them food and in the process converted them.

So that is not right because I don't want to be converted to a religion, and I don't want to convert you to a religion. There has to be mutual respect for all religions all over the world. So that is one of the things that I want--

Also, other question is to--

COMMISSIONER
KAZEMZADEH: Excuse me.

DR.
SHORISH: Professor Nojumi, please--

COMMISSIONER
KAZEMZADEH: No.

DR.
SHORISH: What did you mean by--

COMMISSIONER
KAZEMZADEH: Zieba, you have to obey the rules of the proceedings. I'm sorry. We can ask only one more question, please.

MS.
O'NEILL: I'm Rosemary O'Neill from the Women's Office of the State Department, and I would like to ask the Commissioner from the Human Rights Commission what the Commission has been occupied with the last few months, what they have been doing to organize themselves.

And, secondly, I would like to ask, with regards to the Constitution, will the Commissioners let the draft Constitution out to the public for discussion?

MS.

ANWARI: Thank you for the question, but I will be very short because of the time.

And the activities that we have done in the Human Rights Commission in the last few months, one of the positive things is the establishment of satellite offices of the Human Rights Commission out of Kabul City, and four other provinces of the country, which will enable us to be more representative of Afghanistan out of the Kabul City and also observe and monitor the situation, in terms of violation of human rights or the practicing of the human rights.

The other major activity that we are taking care of is the networking and ongoing consultations with the Constitution Drafting Commission and with the Judicial Commission to ensure that all of the standards and principles of human rights is there.

Based on that, we organized lots of consultations, workshops, and meetings with different groups of people, men and women, in Kabul to collect ideas, comments, and recommendations of the people and transfer it to the Commission for the Constitution Drafting.

These are the two like major activities that we are doing now, and also the ongoing investigation in terms of violations that was happening and the human rights abuses and all of these things. There is a recording of all of these violations, and the complaints which has been coming to the Commission has been recorded and transferred to the relevant departments.

There are much more activities, but I'm afraid that the time will be short, and these are the major ones.

COMMISSIONER
KAZEMZADEH: Thank you very much.

We have a request here from the Commissioners to ask, and this will be the concluding question, Mr. Martin and Ms. McDougall, whether you have any other comments on this whole issue of implementation with which we started, actually?

MR.

MARTIN: Just to pick up from where Ms. Anwari left off, the Commission, obviously, in their circumstances in, has only been able to develop its work slowly, partly perhaps because of funding problems.

But the most reasonable expectations one can have of the ability of the Commission to become an effective investigative body, providing human rights protection, active in human rights education, acting on women's rights, in the context, must be a gradual one, and therefore the international community cannot stand behind the Human Rights Commission.

Of course, it must stand behind it in terms of giving it every support, but not in terms of saying that the only responsibility of the international community is to support the Human Rights Commission. The international community is strongly present on the ground, the United States is out in the provinces, it has a great deal of human rights information regarding current abuses. That information must be used by the United Nations, even more so by the United States in the most powerful relationship that it has with the current abusers of human rights to send a message of their accountability that is not at present being sent.

MS.

McDOUGALL: Well, my closing comment would come back to the question that was not answered, and that is whether or not the draft of the Constitution would be public. My understanding is that it will in March, but there would be a substantial draft at that time.

But my closing comment is I think that the linchpin here, the critical issue is the degree to which the people of Afghanistan own this process and not seeing it as coming to them, even benevolently coming to them, but really that it grows out of their experiences and their interests and their desires, and I think that that makes it imperative that the Constitution be discussed very broadly throughout civil society and that that is an effort that is supported in as many ways as possible and that, in fact, the conclusions of those discussions actually gets, in some way, folded back into the process so that there is a sense of input and participation that is meaningful and real.

COMMISSIONER

KAZEMZADEH: Thank you.

Well, let me just thank all of the panelists for their contributions. This was most enlightening, and we are looking forward to our next panel.

Thank you.

[Applause.]

[Recess from
3:42 p.m. to 3:56 p.m.]